



Department for Culture Media & Sport

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27th October 2016

Sir William Cash MP
Chair of the European Scrutiny Committee
House of Commons
14 Tothill Street
London, SW1H 9NB

Dear Bill

The Audiovisual Media Services Directive

9479/16 Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities

I am writing to address the points raised by the Committee's report in response to my earlier correspondence in relation to the proposed amendments to the Audiovisual Media Services Directive, ("AVMSD") on 15 June 2016. Since my predecessor wrote to you, UK negotiating position for this directive has been agreed and negotiations have begun. Given the process that the UK is preparing to undertake to leave the European Union, our negotiating position on this Directive will remain flexible. Nevertheless, I have sought to respond to each of the points your letter raised below.

Timescales for legislation to take effect

You asked about the likely timeframe for the legislation to take effect and the impact of the referendum result on this directive. The timeframe for adopting a directive varies greatly and realistically we would expect this to be not before mid-2017. This would be followed by a period of implementation, which would take around two years. Please be aware this is subject to change and largely dependent on the progress of the negotiations with other Member States, and the EU institutions.

We expect the UK to take a full part in the negotiations while we remain a member of the EU.



You have asked if the UK would wish to apply the terms of the legislation by means of a bilateral agreement with the EU or individual Member States.

We will consider, as part of the negotiations on the exit from the EU, whether and how the UK might continue to benefit from the country of origin principle enshrined in the Directive.

The application of the terms Directive to the UK after its exit from the EU will form part of those negotiations. Issues around audiovisual matters are not a devolved matter.

I have dealt with the points raised below:

- 1. Levy for video-on-demand providers.** The UK does not believe that the proposed film levy for video-on-demand (VoD) providers would be of benefit to the UK audiovisual sector as a whole. The proposal would introduce an optional film levy on VoD players (such as Netflix) within countries in which these services are received. France and Germany proposed this measure as their film funding systems have been breaking down. These systems imposed a levy on hard copy video cassette and DVD rental, and with the emergence of VOD services (which is replacing hard copy rental), these funds are running dry. The UK has a successful tax relief system in place for film and high-end TV programmes to incentivise productions which are subject to state aid. On this basis, and because the levy has the potential to create a barrier to growth of smaller VOD suppliers, **the UK will oppose this proposal.**
- 2. Derogations for specific issues.** On the issue of derogations from the AVMSD country of origin principle with regard to national security and public health matters, **the UK will look to ensure that these derogations are fully defined and when they can be used, to ensure that these measures are only used in most severe cases.** Derogations in severe cases are already permitted, so this provision would be making explicit the grounds and basis for any derogation.
- 3. Quotas for video-on-demand providers.** I have some concerns on the effectiveness of the proposed 20% quota for European Works on VoD services, especially what is intended by the requirement to give European Works prominence. I believe that quotas could impose unnecessary burdens on new innovative services and prominence could interfere with viewer choice. There is very little evidence that quotas actually work. **The UK will therefore be strongly opposing any quota in this area, but will be realistic in what can be achieved given the majority of other Member States are in favour of a quota system.**
- 4. Advertising liberalisation.** There are two proposals in relation to the relaxation of advertising. The first is around relaxing the rules on lessening the timeframe from 30 minutes to 20 minutes before either news or films can be interrupted by advertising. The second is around creating flexibility in advertising minutage, such that instead of 12 minutes per clock hour, the broadcaster could have an average of 20% advertising per day. (This equates to an average of 12 minutes per hour but would allow the broadcaster to choose when to schedule this). There is no

available evidence as to how the proposals to liberalise advertising this would affect the UK market therefore **we will take a neutral position** with regard to the Commission's proposals.

5. **The exclusion of small and micro businesses.** I consider that the exclusion of small and micro businesses from the requirements aimed at boosting European Works a correct approach as I think we should avoid any regulation that is over burdensome to business. **I will be supporting this exclusion.**
6. **The independence of national regulatory authorities.** The EU Commission proposals on ensuring the independence of national regulatory authorities from national government influence is one which the UK supports. Ofcom, the UK communications regulator by law is, under the Communications Act 2003, independent from Government when it make its decisions on how the UK's communications and media sectors operate on a daily basis. There have been some notable issues recently in how a minority of some other EU Member States' governments have influenced how their communications regulatory bodies are run and the output and decisions that they reach, which needs to be addressed satisfactorily. This issue does cut across issues of sovereignty with the Commission setting out principles of how the governments of Member States should operate. **We are therefore outwardly neutral in the early stages of the negotiations in order to see how the matter develops.**
7. **The role of European Regulators Group.** Lastly, on the proposed enhanced role for the European Regulators Group for Audiovisual Media Services (ERGA), the UK are listening carefully to the arguments put by other EU Member States both for and against ERGA.

I hope that this gives the greater clarity of the UK position during the negotiations of the AVMSD.

I am copying this letter to Lord Boswell, Chairman of the House of Lords European Union Committee; Eve Samson, ESC Clerk, Les Saunders, DExEU, Pooja Lakhani, DCMS Scrutiny Coordinator.

Yours ever

A handwritten signature in blue ink that reads "Matt Hancock". The signature is fluid and cursive, with the first name "Matt" and the last name "Hancock" clearly legible.

Rt Hon Matthew Hancock MP
Minister of State for Digital and Culture